

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**MARIETTA MEMORIAL HOSPITAL,
an Ohio Corporation, *et al.*,**

Plaintiffs,

v.

Civil Action No. 2:16-cv-08603

**WEST VIRGINIA HEALTH CARE
AUTHORITY,**

Defendant.

AFFIDAVIT OF DAVID L. GRUBB

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, David Grubb, hereby state the following facts are true to the best of my knowledge and belief:

1. I am an attorney practicing law in Charleston, West Virginia. I am the founding partner of The Grubb Law Group.

2. I have been a member of the West Virginia Bar since 1979. I am admitted to practice before the United States Court of Appeals for the Fourth Circuit, United States District Court in the Southern District of West Virginia, and United States District Court in the Northern District of West Virginia.

3. I have over thirty years of experience in the area of consumer and employee rights advocacy and litigation – including extensive experience in federal court litigation.

4. I make this affidavit at the request of Webster J. Arceneaux, III, knowing that he will submit the same to a court of law in support of a motion for attorney's fees and costs.

5. All statements and opinions made in this Affidavit are based upon my personal knowledge and experience.

6. Importantly, I am familiar with Mr. Arceneaux, and his firm, Lewis, Glasser Casey & Rollins, PLLC. I am also familiar with the fact that his firm employs partners and associates, and I am aware of the quality of the firm's work on behalf of its clients.

7. I have appeared before Mr. Arceneaux when he has served as a mediator in several consumer and employment cases. He has also acted as a discovery commissioner in cases for my firm. In these settings, I have found the skills and caliber of work of Mr. Arceneaux and his firm to be extremely high.

8. Based upon my education, training, and experience practicing law in this state, I am also familiar with the type of costs incurred and the amount of attorney's fees associated with civil litigation in the State of West Virginia.

9. Although my work primarily involves cases where I am compensated on a fee shifting, contingency basis, there are occasions where I charge an hourly rate for my legal services.

10. In fact, approximately four years ago, I was compensated at a rate of \$390.00 per hour for my legal services in a non-fee shifting, non-contingency case.

11. As noted above, I more commonly handle cases involving claims filed pursuant to fee shifting statutes.

12. In this context as well, I am familiar with the prevailing market rates for reasonable attorney's fees in West Virginia.

13. Based on the foregoing, and based on my knowledge of Mr. Arceneaux's skill, ability, training, experience, and reputation, I believe that his request for an hourly rate of \$325-350.00 per hour is well within the reasonable range of prevailing market rates in this area.

14. I further believe that the request for an hourly rate of \$350.00 for Mr. Casto and \$275.00 for Ms. Raupp are both within the reasonable range of prevailing market rates in this area.

15. In this regard, in 2015 I was awarded \$400.00 per hour in a fee-shifting case before The Honorable Robert C. Chambers, United States District Court for the Southern District of West Virginia. *See* Memorandum Opinion and Order of July 9, 2015, *Beattie v. CMH Homes, Inc., et al.*, Civil Action No. 3:12-cv-02528 (S.D.W. Va.) (Chambers, J.).

16. More recently, I was awarded: (a) \$400.00 per hour in a fee-shifting case before The Honorable Joanna I. Tabit, Judge, Thirteenth Judicial Circuit; and (b) \$390.00 per hour in a fee-shifting case before The Honorable Carrie L. Webster, Judge, Thirteenth Judicial Circuit.

17. In January of 2008, I was awarded a fee of \$350.00 per hour in a fee-shifting case before The Honorable David W. Nibert, Chief Judge, Fifth Judicial Circuit. *See* Order of January 2, 2008, *Milam v. Fleetwood Homes of N.C., Inc.*, Civil Action No. 02-C-11 (Roane County Circuit Court). In addition, the Court granted a ten percent lodestar enhancement to account for excellent results, delay in payment, and contingency

risk of loss. This resulted in an effective hourly rate of \$385.00. When adjusted for inflation, the foregoing hourly rate is greater than Mr. Arceneaux's current request.

18. Similarly, in June of 2006 I was awarded a fee of \$325.00 per hour in a fee shifting case before The Honorable Thomas Evans, Judge, Fifth Judicial Circuit. *See* Order of June 24, 2006, *Belcher v. White Chrysler-Plymouth-Dodge of Ripley, Inc.*, Civil Action No. 00-C10 (Jackson County Circuit Court). In his Order, Judge Evans also granted a ten percent lodestar enhancement, resulting in an effective hourly rate of \$357.50. Again, when adjusted for inflation, this hourly rate is also greater than Mr. Arceneaux's current request.

19. I am also aware of several decisions involving other lawyers in West Virginia, including the following:

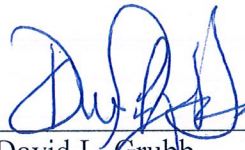
- Last year, the Raleigh County Circuit Court awarded Charleston attorney Dan Hedges an hourly rate of \$425.00 in a consumer protection case tried to successful verdict. *See* Order of February 23, 2016, *Walters v. Quicken Loans, Inc., et al.*, Civil Action No. 11-C-1123-K (Kirkpatrick, J.).
- Several years ago, the Ohio County Circuit Court awarded Wheeling attorney James Bordas an hourly rate of \$400.00 in a consumer protection case. *See* Order of February 17, 2011, *Brown v. Quicken Loans, Inc., et al.*, Civil Action No. 08-C-36 (Recht, J.).
- Also, more than six years ago, the Jackson County Circuit Court awarded Charleston attorney Mark Atkinson \$450.00 per hour in an employment discrimination case. *See* Order of June 7, 2010, *Rice v. Burke-Parsons-Bowlby Corporation, et al.*, Civil Action No. 09-C-41.
- Similarly, the Boone County Circuit Court awarded Mr. Atkinson \$375.00 per hour in an age discrimination case in 2009. *See* Order of March 9, 2009, *Frye v. Superior Highwall Miners, Inc., et al.*, Civil Action No. 08-C-16 (Thompson, J.).
- Further, the Ohio County Circuit Court awarded Wheeling attorney Thomas Schultz \$400.00 per hour in an insurance bad faith case in 2004. *See* Order of May 7, 2004, *Nationwide Mutual Insurance Company v. Robinson*, Civil Action No. 03-C-442 (Gaughan, J.).

20. I believe that the foregoing awards are reasonable and reflect the reasonable range of fair market rates for trial counsel in fee-shifting cases, such as the one handled by Mr. Arceneaux and his firm. Accordingly, as noted before, I believe that the requested hourly rates are extremely reasonable and well within the range of prevailing market rates for similar legal services in West Virginia.

21. Lastly, it is important to emphasize that civil rights and constitutional cases – such as this case involving the dormant commerce clause – are difficult and warrant an award at a fully compensable hourly rate. If not, attorneys willing to represent plaintiffs in such cases will become increasingly rare.

22. If I can amplify anything stated herein, I am willing to do so.


AND FURTHER AFFIANT SAITH NAUGHT.



David L. Grubb

Taken, subscribed and sworn to before me this 6 day of December, 2017.

My Commission Expires: June 13, 2022.



Notary Public

